

# Exhibit 3

to

Memorandum of United States in Opposition  
To Dey Defendants' Motion in Limine  
To Exclude Opinions of Mark Duggan, Ph.D

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

MDL NO. 1456

CIVIL ACTION NO. 01-CV-12257-PBS

Judge Patti B. Saris

Magistrate Judge Marianne B. Bowler

IN RE: PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE LITIGATION

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THIS DOCUMENT RELATES TO:

U.S. Ex rel. Ven-A-Care of the  
Florida Keys, Inc., v. Abbott  
Laboratories, Inc., et al.,  
No. 06-CV-11337-PBS

VOLUME I OF II

VIDEOTAPE 30(B)(6) DEPOSITION OF PALMETTO

(ROBIN KREUSH STONE)

Thursday, February 28, 2008

9:00 AM to 5:00 PM

Columbia, South Carolina

Reported by: Jane G. LaPorte

Merit and Professional Certifications

1 Q. Ms. Stone, is what I have marked as  
2 Abbott Exhibit 522, the document that you prepared  
3 to summarize your review into the array files for  
4 purposes of this litigation?

5 A. Yes.

6 Q. It's a document that you prepared?

7 A. Yes.

8 Q. And it was something that you did for  
9 purposes of this litigation; is that right?

10 A. Yes.

11 Q. It's not a document that you already had

12 --

13 A. No.

14 Q. -- developed?

15 A. No.

16 Q. Correct?

17 A. (no response.)

18 MR. TORBORG: I'll ask you some questions  
19 about that later. I just wanted to get that marked.

20 Q. Anything that you did to prepare for  
21 today's deposition, apart from reviewing the array  
22 files and preparing Abbott Exhibit 522?

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VOLUME II OF II

VIDEOTAPE 30(B)(6) DEPOSITION OF PALMETTO

(ROBIN KREUSH STONE)

Friday, February 29, 2008

9:00 AM to 4:00 PM

Columbia, South Carolina

Reported by: Jane G. LaPorte

Merit and Professional Certifications

1 and Roxane was a generic, would that have anything  
2 to do with explaining why the Burroughs Wellcome  
3 product no longer appeared in the arrays after a  
4 certain point in time?

5 MR. HECK: Objection; form.

6 A. Without seeing the source material, it  
7 looks to me like it was due to the change in the  
8 code -- or, wait a minute, I'm sorry. I'm confusing  
9 myself with J 7500 and K 0199.

10 Okay. Repeat the question again, please.

11 MR. HENDERSON: Just a minute, I will  
12 withdraw the question.

13 Q. I would like to turn your attention to  
14 Exhibit 522, which is the document that you  
15 prepared, Abbott Exhibit 522, the 67-page document.

16 Now, approximately how much time did you  
17 spend preparing this document, Ms. Stone?

18 A. A lot.

19 Q. Roughly how many hours?

20 A. I'm trying to think. Gosh, probably at  
21 least three to four days, when you combine the time  
22 together.

1 Q. Did you review hard copied materials?

2 A. Yes.

3 Q. And did you review electronic array  
4 materials?

5 A. Yes.

6 Q. Did you review comparison pricing sheets  
7 that compared Palmetto pricing information against  
8 pricing information from other DMERCS?

9 A. Yes.

10 Q. Did you review a number of Palmetto  
11 advisory publications?

12 A. Yes.

13 Q. And does this document represent your  
14 best determination about which arrays represent  
15 final arrays that were used for pricing  
16 determinations?

17 A. Yes.

18 MR. HECK: Objection; form.

19 Q. Now, the column that is entitled: Final  
20 fee/array, has that heading to it; is that correct?

21 A. I'm sorry. Repeat that.

22 Q. You have a column entitled: Final

1 fee/array.

2 A. Yes.

3 Q. What does the Y indicate?

4 A. The Y indicates that I was able to  
5 confirm that that was the final array and/or fee.

6 Q. For that particular time period?

7 A. For that particular time period.

8 Q. And the comments to the right are your  
9 comments; is that correct?

10 A. That is correct.

11 Q. And what do they just --

12 MR. HENDERSON: I'll withdraw that  
13 question.

14 Q. You were asked some questions by  
15 Mr. Torborg -- I think asked you some questions  
16 about the information shown on page five of Exhibit  
17 522 and this relates to J 3370.

18 And I think in response to a question by  
19 Mr. Torborg, you indicated that beginning the first  
20 quarter of 1997, there were no arrays prepared  
21 for -- no DMERC array prepared for J 3370; is that  
22 right?

**A4712**

Palmetto GBA Drug Code Array Review

CD: AWQCD028 - 12/18/07 and New CD containing Medicare Advisories

**DMERC**

CODE	Pricing Year	Quarter	Path	Final Fee/Array	Comments
A4712	NA	NA	No DMERC Arrays	NA	NA

**PARTB**

CODE	Pricing Year	Quarter	Path	Final Fee/Array	Comments
A4712	NA	NA	No Part B Arrays	NA	NA

2/27/2008

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A4712



**Pages Omitted**

**K0518 J7644**

## Palmetto GBA Drug Code Array Review

CD: AWQCD028 - 12/18/07 and New CD containing Medicare Advisories

**DMERC**

<b>CODE</b>	<b>Pricing Year</b>	<b>Quarter</b>	<b>Path</b>	<b>Final Fee/Array</b>	<b>Comments</b>
K0518	Prior to 4/97	NA	NA	NA	K code appears to be invalid prior to 4/1/97.
K0518	1997	QTR2	No array files located.	Y	Fee publication located in E:\Archived Advisories\DMERC Advisories Part 2\Sum97Advpart6.pdf
K0518	1997	QTR3	No array files located.	Y	Advisory article published fee changes only. K0518 was not listed as a change.
K0518	1997	QTR4	No array files located.	Y	Advisory article published fee changes only. K0518 was not listed as a change.
K0518	1998	QTR1	Hard copy documents	Y	See 1998 hard copy array files. QWQ037-0018.
K0518	1998	QTR2	Hard copy documents	Y	See 1998 hard copy array files.
K0518	1998	QTR3	Hard copy documents	Y	See 1998 hard copy array files.
K0518	1998	QTR4	Hard copy documents	Y	See 1998 hard copy array files.
K0518	1999	QTR1	No array files located.	Y	Based on E:\nonPrivDATA\Item 1 Drug Files (Pricing information)\2001 DMERC Drugs\95 thru Current Qtrly Updates.zip, it is most likely QTR1 & QTR2 1999 arrays are the same as either QTR4 1998 or QTR3 1999 since the fees remained the same.
K0518	1999	QTR2	No array files located.	Y	It is likely that the KO and KP array would match QTR1 1999 and QTR3 1999 since these fees are the same. The KQ difference for QTR2 1999 in E:\nonPrivDATA\Item 1 Drug Files (Pricing information)\2001 DMERC Drugs\95 thru Current Qtrly Updates.zip could be a rounding issue, or the incorrect J7051 fee could have been used, e.g., 100% vs. 95%.

**K0518 J7644**

K0518	1999	QTR3	E:\nonPrivDATA\Item 1 Drug Files (Pricing information)\1999 Drug Files\K0000 7-1-99.zip	Y	Appears to be final array based on the DMERC Comparison File E:\nonPrivDATA\Items 2 & 7 Communication (Contractors Providers Manufacturers)\99 Jul DMERC Updates.xls and E:\nonPrivDATA\Item 1 Drug Files (Pricing information)\2001 DMERC Drugs\95 thru Current Qtrly Updates.zip. Note: when opening workbook be sure to select "NO" when prompted to update workbook with links. Also, noted that KQ price is listed in the latter file as \$3.00 instead of \$3.04. I strongly believe the \$3.04 is correct and that the \$3.00 was the result of a typo or overlay of a formula.
K0518	1999	QTR4	E:\nonPrivDATA\Item 1 Drug Files (Pricing information)\1999 Drug Files\K0000 10-1-99.zip	Y	Appears to be final array based on the comparison to E:\nonPrivDATA\Item 1 Drug Files (Pricing information)\2001 DMERC Drugs\95 thru Current Qtrly Updates.zip file. Note: when opening workbook be sure to select "NO" when prompted to update workbook with links.
K0518/ J7644	2000	QTR1	E:\nonPrivDATA\Item 1 Drug Files (Pricing information)\2000 Drug Files\K0000 1-1-00rev.zip	Y	Array matches E:\nonPrivDATA\Item 1 Drug Files (Pricing information)\2001 DMERC Drugs\95 thru Current Qtrly Updates.zip.

**K0518 J7644**

K0518/ J7644	2000	QTR2	E:\nonPrivDATA\Item 1 Drug Files (Pricing information)\2000 Drug Files\K0000 4-1-00.zip	Y	File E:\nonPrivDATA\Item 1 Drug Files (Pricing information)\2001 DMERC Drugs\95 thru Current Qtrly Updates.zip appears to reflect the correct fees. However, the QTR2 2000 array file appears to reflect the QTR1 2000 J7051 fee. The fees match up when you use the correct J7051 final fee. File E:\nonPrivDATA\Item 1 Drug Files (Pricing information)\2001 DMERC Drugs\95 thru Current Qtrly Updates.zip matches E:\Archived Advisories\DMERC Advisories\Summer2000Advisory.pdf.
K0518/ J7644	2000	QTR3	E:\nonPrivDATA\Item 1 Drug Files (Pricing information)\2000 Drug Files\J7000oldk_codes 7-1-00.zip	Y	File E:\nonPrivDATA\Item 1 Drug Files (Pricing information)\2001 DMERC Drugs\95 thru Current Qtrly Updates.zip appears to reflect the correct fees. The difference in the array and the final fee appears to be the use of J7051 fee at 95% when 100% should have been used. The fees match when using the correct J7051 fee. File E:\nonPrivDATA\Item 1 Drug Files (Pricing information)\2001 DMERC Drugs\95 thru Current Qtrly Updates.zip matches E:\Archived Advisories\DMERC Advisories\Autumn2000Advisory.pdf.
K0518/ J7644	2000	QTR4	No array files located.	Y	QTR4 2000 fee is the same as QTR3 2000 and QTR1 2001. It is most most likely the array for QTR4 2000 would be the same as the QTR3 2000 and/or QTR1 2001 arrays. Final fees listed in E:\nonPrivDATA\Item 1 Drug Files (Pricing information)\2001 DMERC Drugs\95 thru Current Qtrly Updates.zip and E:\Archived Advisories\DMERC Advisories\Winter2000Advisory.pdf.

**K0518 J7644**

K0518/ J7644	2001	QTR1	Hard copy documents	Y	See hard copy documents titled "Drug Arrays for Inhalation Solutions 1995 - 2004/2001 1st Quarter Calculations.
K0518/ J7644	2001	QTR2	Hard copy documents and "drugs2002.mdb" access database file.	Y	See hard copy documents titled "Drug Arrays for Inhalation Solutions 1995 - 2004/2001 2nd Quarter Calculations. Calculations match E:\Archived Advisories\DMERC Advisories\Summer2001Advisory.pdf.
K0518/ J7644	2001	QTR3	Hard copy documents and "drugs2002.mdb" access database file.	Y	See hard copy documents titled "Drug Arrays for Inhalation Solutions 1995 - 2004/2001 3rd Quarter Calculations. Calculations match E:\Archived Advisories\DMERC Advisories\Autumn2001Advisory.pdf.
K0518/ J7644	2001	QTR4	Hard copy documents and "drugs2002.mdb" access database file.	Y	See hard copy documents titled "Drug Arrays for Inhalation Solutions 1995 - 2004/2001 4th Quarter Calculations. Arrays match E:\Archived Advisories\DMERC Advisories\Winter2001Advisory.pdf and E:\nonPrivDATA\Item 1 Drug Files (Pricing information)\2001 DMERC Drugs\95 thru Current Qtrly Updates.zip; however, the Summary Report is different from the detail report produced from "drugs2002.mdb", I'm not sure why.
K0518/ J7644	2002	QTR1	Hard copy documents and "drugs2002.mdb" access database file.	Y	See hard copy documents titled "Drug Arrays for Inhalation Solutions 1995 - 2004/2002 1st Quarter Calculations. Calculations match E:\Archived Advisories\DMERC Advisories\Spring2002Advisory.pdf

**K0518 J7644**

K0518/ J7644	2002	QTR2	Hard copy documents and "drugs2002.mdb" access database file.	Y	See hard copy documents titled "Drug Arrays for Inhalation Solutions 1995 - 2004/2002 2nd Quarter Calculations. Calculations match E:\Archived Advisories\DMERC Advisories\Summer2002Advisory.pdf
K0518/ J7644	2002	QTR3	Hard copy documents and "drugs2002.mdb" access database file.	Y	See hard copy documents titled "Drug Arrays for Inhalation Solutions 1995 - 2004/2002 3rd Quarter Calculations. Calculations match E:\Archived Advisories\DMERC Advisories\Autumn2002Advisory.pdf
K0518/ J7644	2002	QTR4	"Drugs2002.mdb" access database file. Contains drug sources, but not final calculations.	Y	QTR3/QTR4 2002 and QTR1/QTR2 2003 fees (\$3.34, 3.34 and \$2.98) match. It is most likely that QTR4 2002 arrays match the QTR3 2002 or QTR1 2003 array since the fees remained the same.. Final fees located in E:\Archived Advisories\DMERC Advisories\Autumn+2002.pdf, Winter2002 Advisory.pdf, and Spring03Advisory.pdf.
K0518/ J7644	2003	QTR1	Hard copy documents titled "Drug Arrays for Inhalation Solutions 1995 - 2004/2003 1st Quarter Calculations"	Y	Array matches E:\Archived Advisories\DMERC Advisories\Spring03Advisory.pdf.
K0518/ J7644	2003	QTR2	Hard copy documents titled "Drug Arrays for Inhalation Solutions 1995 - 2004/2003 2nd Quarter Calculations" and "April 2003 (Q2) DMERC Drug Update"	Y	Array matches E:\Archived Advisories\DMERC Advisories\Summer03Advisory.pdf.
K0518/ J7644	2003	QTR3	Hard copy documents titled "Drug Arrays for Inhalation Solutions 1995 - 2004/2003 2nd Quarter Calculations" and "July 2003 (Q3) DMERC Drug Update"	N	Notes in hard copy files indicates there was a data migration problem with the database for this update. Based on E:\Archived Advisories\DMERC Advisories\Autumn03Advisory.pdf, the fee for QTR3 2003 was \$3.34, \$3.34 and \$3.06. Palmetto adopted CIGNA's fees.

**K0518 J7644**

K0518/ J7644	2003	QTR4	Hard copy documents titled "Drug Arrays for Inhalation Solutions 1995 - 2004/2003 2nd Quarter Calculations" and "October 2003 (Q4) DMERC Drug Update"	Y	Array calculation differs from fee in E:\Archived Advisories\DMERC Advisories\Winter03Advisory.pdf. Based on E:\nonPrivDATA\Items 2 & 7 Communication (Contractors Providers Manufacturers)\2003 QTR4 Regional Quarterly Update Comparison Final.xls file, KQ fee was changed to reconcile differences. It appears that the 95% J7051 was used in the array when 100% should have been used.
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**PARTB**

CODE	Pricing Year	Quarter	Path	Final Fee/Array	Comments
J7644	NA	NA	Inhalation drugs not normally paid under Part B	NA	NA